

Docket: 2009-2356(IT)I

BETWEEN:

CAPUCINE MESAMOUR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on December 3, 2009, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant: Karine Lévesque
Émilie Ghaleb, articling student

Counsel for the Respondent: Marjolaine Breton
Stéphanie Côté

JUDGMENT

The appeal against the redeterminations dated February 20, 2008, under which the Minister of National Revenue revised the Child Tax Benefit and National Child Benefit Supplement for the periods from July 2006 to June 2007 and from July 2007 to January 2008 for the 2005 and 2006 base years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 5th day of March 2010.

"Réal Favreau"

Favreau J.

Translation certified true
on this 29th day of April 2010.

Brian McCordick, Translator

BETWEEN:

CAPUCINE MESAMOUR,

Appellant,

and

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REASONS FOR JUDGMENT

Favreau J.

[1] By notices of redetermination dated February 20, 2008, the Minister of National Revenue ("the Minister") revised the Child Tax Benefit (CTB) and the National Child Benefit Supplement (NCBS) for the periods from July 2006 to June 2007 (2005 base year) and July 2007 to January 2008 (2006 base year). The notices demanded that the Appellant repay \$7,417.49 in CTB and NCBS overpayments for the 2005 base year, and \$7,489.27 in CTB and NCBS overpayments for the 2006 base year.

[2] In making and confirming the redeterminations in issue, the Minister relied on the following assumptions of fact:

[TRANSLATION]

- (a) The Appellant acted as a transition support family for minors who were claiming refugee protection in Canada.
- (b) The minors were under the responsibility of the Programme régional d'accueil et d'intégration des demandeurs d'asile (PRAIDA), whose mandate is to deliver health and social services to refugee claimants and people who need to sort out their immigration status, and to give unaccompanied minors subsistence aid until they reach the age of majority or become permanent residents of Canada. These services are offered through CLSCs [local community service centres] or other centres.

- (c) The children contemplated by the notices of redetermination, which stated that the Appellant must repay the amounts overpaid, are Carmella, Bellard, Fanta, Nancy Marguerite and Rachel. The coverage applications for Christina and Améris were denied before any benefits were paid to the Appellant for those children.
- (d) The information gathered by the Agency showed that during the periods in issue, the Appellant was not the eligible individual, the children entrusted to her were not wholly dependent on her for support and she did not have, in law or in fact, the custody and control of those children.

[3] The only issue is whether the Appellant owes the amounts that the Minister claims from her in relation to the 2005 and 2006 base years. The relevant provisions of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), as amended ("the Act") are sections 122.5, 122.6 and 122.61 and subsections 252(1) and 252(2).

[4] The Appellant acted as a transitional support family (*famille d'entraide*) for children who had arrived in Canada as unaccompanied refugees and had no relatives in Canada. She claims that the children were wholly dependent on her, that she was primarily responsible for their care and upbringing, and that she was the contact person for the children's school authorities. The Appellant claims that she had *de facto* custody of the children and that she looked after them as her own.

[5] PRAIDA director Claude Mallette, who is based at the CLSC de la Montagne, testified at the hearing and explained PRAIDA's mandate and the services that it provides. Among other things, the program offers health and social services to refugee claimants and people who need to regularize their immigration status. The services that PRAIDA provides include assessments, referrals, and guidance in securing housing, which is available until the clients become adults or obtain refugee or permanent resident status. PRAIDA has signed, or is in the process of signing, formal agreements with Canada's Immigration and Refugee Board and with the Canada Immigration Centre and the Canada Border Services Agency with a view to recognizing PRAIDA as a designated representative and to having it share responsibilities for unaccompanied minors with the Centre jeunesse de Montréal – Institut universitaire.

[6] Mr. Mallette explained that PRAIDA takes responsibility for unaccompanied minors when they arrive in Canada at international airports or border stations. Temporary lodging is provided upon their arrival, and longer-term housing and guidance is provided later by a support family, a foster family secured through Centre Jeunesse de Montréal or certain specialized homes or centres. The purpose of support families is to provide a living environment that helps make up for the fact that the children are not with parents. They provide food, hygiene and health services, education, as well as educational and recreational activities. To cover the housing and support, PRAIDA pays the support family a contribution of \$170 per month for one child and an additional \$110 per month for each additional child. The children's psychological care is provided by social workers, and a designated PRAIDA representative keeps track of the children's immigration applications as they make their way through the system.

[7] According to Mr. Mallette, neither PRAIDA nor the support families have legal custody of the children. Following a pilot project carried out by the Service d'aide aux réfugiés et aux immigrants du Montréal métropolitain, an organization that merged with Clinique Santé Accueil to form PRAIDA (under which applications for government benefits have been accepted) the practice became systematic, and, as a result, several support families have applied for benefits. Mr. Mallette testified that, as far as he knows, this is the first time that the Canada Revenue Agency (CRA) has asked that these benefits be paid back.

[8] Ms. Mesamour testified as well. She confirmed that she has been a support family since 2005. She lives alone with her son, who helps her with her daily chores. She works part-time and receives social assistance benefits. She explained that PRAIDA's role was mainly to monitor the children's psychosocial well-being and that a representative visited her every six months for that purpose. She also confirmed that PRAIDA could take the children away from her without her consent and that she alone would be unable to support the children's optometry and dental expenses, which were defrayed by PRAIDA from an *ad hoc* assistance budget.

[9] The CRA officer who handled the Appellant's objection file also testified at the hearing. In an information request in the form of a questionnaire, the CRA asked the Appellant to provide it with proof that she was responsible for the children's care and upbringing (e.g. a letter from the school administration or the daycare centre confirming that the children attended their institution, and confirming the name and address of the guardian or responsible person; and a letter from a family doctor or dentist confirming the children's visits or examinations and the name and address of the person with whom the children reside). As required, the Appellant responded to the questionnaire and submitted two attestations from a school, which did not contain the name or address of the person responsible. Based on the information provided by the Appellant and the documents adduced in connection with the mission, support role and services offered by PRAIDA, the officer assigned to the Appellant's objection rejected it. In closing, the officer emphasized that, in the case of foster families, the government benefits are paid to the Centre Jeunesse, not to the foster family.

Analysis and conclusion

[10] Based on the definition of "eligible individual" under section 122.6 of the Act for the purposes of the Canada Child Tax Benefit, in order to be an eligible individual, a person must meet both of the following conditions at the relevant time: reside with the qualified dependant, and primarily fulfil the responsibility for the care and upbringing of the qualified dependant. The factors listed in section 6302 of the Income Tax Regulations ("the Regulations") are used in order to determine what such care and upbringing consist in.

[11] Despite the fact that the definition of "eligible individual" refers solely to the dependant's parent, the Act extends the meaning of the words "child" and "parent."

[12] Under subsection 252(1), a person wholly dependent on the taxpayer, and of whom the taxpayer has custody and control, in law or in fact, is considered a child of the taxpayer. By virtue of subsection 252(2) of the Act, that taxpayer is considered the child's parent. Here are the relevant excerpts from the two subsections:

Section 252: **Extended meaning of "child"**

- (1) In this Act, words referring to a child of a taxpayer include
 - (a) . . .
 - (b) a person who is wholly dependent on the taxpayer for support and of whom the taxpayer has, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control;
 - (c) . . .
- (2) **Relationships.** In this Act, words referring to
 - (a) a parent of taxpayer include a person
 - (i) whose child the taxpayer is
 - . . .

[13] Consequently, a person who, like the Appellant, is not a parent of the children, but has claimed tax credits in respect of the children, can be considered their parent if the children are wholly dependent on her, and under her custody and control.

[14] In this case, it seems to me that it is reasonable to believe that the Appellant had custody and control of the children that PRAIDA entrusted to her. However, I do not believe it could be claimed that the children were wholly dependent on her.

[15] I do not see how a person who already resides with a dependent, has a part-time job and receives social assistance can be considered to have other children (three or four at a time) who are wholly dependent on her. The contributions from PRAIDA for each child taken in are clearly insufficient to enable the Appellant to look after their care and upbringing. In fact, the Appellant was unable to respond satisfactorily to the CRA's information request.

[16] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 5th day of March 2010.

"Réal Favreau"

Favreau J.

Translation certified true
on this 29th day of April 2010.

Brian McCordick, Translator

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